

AMENDMENT TO LEASE

AMENDMENT (this "Amendment") dated as of July 8, 2002 between **BATTERY PARK CITY AUTHORITY**, d/b/a **HUGH L. CAREY BATTERY PARK CITY AUTHORITY**, a body corporate and politic constituting a public benefic corporation of the State of New York, as Landlord, having an office at One World Financial Center, New York, New York 10281 ("Landlord"), and **RIVER TERRACE ASSOCIATES, LLC**, a New York limited liability company having an office c/o Albanese Organizations, Inc., 1050 Franklin Avenue, Garden City, New York 11530 ("Tenant").

W I T N E S S E T H:

WHEREAS, Landlord and Tenant have heretofore entered into an Agreement of Lease, dated April 4, 2001 (the "Original Lease"; the Original Lease, collectively with and as modified by this Amendment being herein referred to as the "Lease") for the leasing of certain premises known as Site 18A, Battery Park City, New York, New York and as more particularly described in the Original Lease (the "Premises"); and

WHEREAS, following the terrorist attacks on the World Trade Center and the current economic climate of downtown New York City, Tenant has requested and Landlord has agreed to make certain amendments to the Original Lease.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter provided, Landlord and Tenant agree that, subject to the terms of Section 18 below, the Original Lease is hereby amended as follows:

1. Except as otherwise herein defined, all terms contained in this Amendment shall for the purposes hereof have the same meaning ascribed to them in the Original Lease.

2. Section 1.01 is amended by:

a. Deleting the defined terms:

i. "Aggregate Rent".

b. Adding the following defined terms:

Term	Definition/Section Reference
Amendment	Amendment to Lease between Tenant and Landlord dated July <u>6</u> , 2002.
Amendment Date	The date of the Amendment.
Annual Financial Statements	Collectively, the Annual Percentage Rent Statements and the Annual NOI Rent Statements.
Annual NOI Rent Statements	Defined in <u>Section 3.08(c)</u>
Assumed Base Rent	Defined in <u>Section 3.01(d)</u>
Construction Period	Defined in <u>Section 3.01(a)(i)</u>
Contribution Funding Conditions	Defined in <u>Section 44.02</u>
Capital Event	Either (x) any Transfer, other than Transfers of membership interests in Tenant between the members of Tenant as of the Amendment Date or (y) any financing of this Lease or the Building by a Mortgagee secured by a Mortgage occurring after the first permanent financing following Substantial Completion.
Capital Event Rent	Defined in <u>Section 3.10(a)</u>
Capital Event Rent Termination Date	Defined in <u>Section 3.10(b)</u>

Term	Definition/Section Reference
Capital Event Shortfall	As of any given date, the amount equal to (A) all Capital Event Rent payable pursuant to <u>Section 3.10(a)(i)</u> through <u>(v)</u> , <u>less</u> (B) the sum of (x) all Capital Event Rent actually paid to Landlord upon prior Capital Events pursuant to <u>Sections 3.10(b)(iii), (v), (vi), (vii) and (viii)</u> <u>plus</u> (y) any NOI Rent paid pursuant to <u>Section 3.08(a)</u> . The unpaid portion of the Deferred Obligations shall accrue interest from and after the date of the first Qualified Capital Event occurring after the Amendment Date at a rate of interest equal to the yield on six (6) month United States Treasury Bills in effect on the date of such Qualified Capital Event, compounded annually and accruing from and after the date of such Qualified Capital Event, which interest shall be added to and become a part of the Capital Event Shortfall.
Capital Event Statement	The Estimated Capital Event Statement and Final Capital Event Statement.
Contribution Funding Conditions	Defined in <u>Section 44.02</u>
Construction Period	The period commencing on the Commencement Date and ending on the Stabilization Date.
Deferred Construction Period Rent	Defined in <u>Section 3.01(a)(i)</u>
Deferred First Period Rent	Defined in <u>Section 3.01(a)(i)</u>
Deferred Obligations	Collectively, all Deferred Construction Period Rent, Deferred First Period Rent and PILOST.
Department	Defined in <u>Section 3.02(f)</u>
DHCR	Defined in <u>Section 45.01</u>
Estimated Capital Event Statement	Defined in <u>Section 3.10(c)</u>

Term	Definition/Section Reference
Final Capital Event Statement	Defined in <u>Section 3.10(d)</u>
Financial Statements	Collectively, the Annual Financial Statements and the Quarterly Financial Statements.
First Sale	The first Sale occurring after the Amendment Date.
Landlord's Contribution	Defined in <u>Section 44.01</u>
Landlord Kicker	Defined in <u>Section 3.10(b)(ix)</u>
Net Capital Event Proceeds	The proceeds of a Capital Event, received by Tenant, decreased by (a) reasonable and customary out-of-pocket transaction costs and expenses and (b) proceeds to be used by Tenant to fund expenditures for Qualified Capital Improvements; provided such Qualified Capital Improvements have (x) not been funded from previously established reserves or Net Operating Income, (y) are undertaken within six (6) months following such Capital Event and diligently prosecuted thereafter and (z) have been approved by Landlord prior to such Capital Event, such approval not to be unreasonably withheld or delayed.

Term	Definition/Section Reference
Net Operating Income	With respect to any fiscal period of Tenant, all revenues received by Tenant during that period from the operation of the Building (including all rents, concessions and use charges received with respect to the Building, but excluding Capital Event Proceeds), decreased by (a) reasonable and customary cash expenditures for bona fide purposes relating to the Premises, (b) reserves established in such amounts as the Tenant reasonably determines and which are comparable to any such reserves maintained for other buildings within borough of Manhattan which are similar to the Building, (c) debt service payable to a Mortgagee under a Mortgage, including interest and customary amortization, but not optional principal payments or other balloon principal payments made prior to the maturity of such Mortgage and (d) expenditures for Qualified Capital Improvements, provided all reserves relating to such capital improvements have first been exhausted.
NOI Rent	Defined in <u>Section 3.08</u>
PILOST	Defined in <u>Section 11.05(c)</u>
Project	Defined in Amendment Section 18
Qualified Capital Event	A Capital Event which is either (x) a Sale or (y) any financing of this Lease or the Building secured by a Mortgage occurring after the first permanent financing following Substantial Completion; provided such financing is funded at loan to value ratio of not less than the maximum percentage then obtainable from Institutional Lenders making non-recourse, commercially reasonable mortgage loans on buildings similar to the Building in Manhattan.

Term	Definition/Section Reference
Qualified Capital Improvements	Capital Improvements required to be made by Tenant under the Lease or a Mortgage; or, Capital Improvements consistent with the kind of capital improvements that a prudent owner of a building within borough of Manhattan similar to the Building would make under the circumstances; or, Capital Improvements that are otherwise approved by Landlord.
Quarterly Financial Statements	Collectively, the Quarterly Percentage Rent Statements and the Quarterly NOI Rent Statements.
Quarterly NOI Rent Statements	Defined in <u>Section 3.08(b)</u>
Re-commencement of Construction	Defined in Amendment Section 17(a)
Re-commencement Outside Date	Defined in Amendment Section 17(a)
Regulatory Body	Defined in <u>Section 45.02</u>
Release Date	Defined in <u>Section 45.02</u>
Rent Control Sanctions	Defined in <u>Section 45.04</u>
Rent Officer	Defined in <u>Section 45.03</u>
Rent Program	Defined in <u>Section 45.03</u>
Sale	Either (a) a bona fide sale of the Building or assignment of this Lease for fair market value or (b) a bona fide Transfer for fair market value, which by itself, or collectively with such prior Transfers, have the effect of conveying one hundred percent (100%) of the direct or indirect ownership interests in Tenant, as Tenant is constituted as of the date hereof.
Section 421-a	Section 421-a of the Real Property Tax Law.

Term	Definition/Section Reference
Stabilization Date	The date which is the last day of the month in which occurs the earlier of the following dates: (x) the date twelve (12) months following the first Temporary Certificate of Occupancy has been issued for the Building or (y) the date upon which ninety-three percent (93%) of the residential units in the Building are occupied.
Temporary Certificate of Occupancy or TCO	A temporary certificate of occupancy issued by the Department of Buildings of New York City pursuant to Section 645 of the New York City Charter or other similar certificate issued by a department or agency of New York City.
Tenant's Contribution	The total equity investment of each of the members of Tenant, consisting of all cash contributed to Tenant from time to time by each of the members of Tenant and a deferred developer's fee in the amount of \$3,300,000, which cash contribution shall be certified by the chief financial officer of Tenant and the C.P.A.

c. Amending the following definitions:

Term	Definition/Section Reference
Construction Commencement Date	April 4, 2001.

3. Section 3.01 and Schedule 1 are deleted in their entirety and replaced by the following new Section 3.01 and Schedule 1 attached hereto:

3.01. Base Rent.

a. For the period beginning on the Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to Landlord, without notice or demand, the annual sums referred to below (collectively, the "Base Rent"):

i. From and after the Commencement Date until the Stabilization Date, the total sum of Two Million One Hundred Thousand Dollars (\$2,100,000). Notwithstanding the foregoing, all of such Construction Period Base Rent shall be deferred and shall be payable in accordance with the terms of Section 3.10 below

(all Base Rent payable pursuant to this Section 3.01(a)(i) being referred to as “Deferred Construction Period Rent”). Promptly after such date upon which the entire Landlord’s Contribution (\$9,000,000) has been funded, Landlord will return any portion of the Deferred Construction Period Rent which has been paid prior to the Amendment Date, provided such Deferred Construction Period Rent is not yet then payable pursuant to the terms of this Lease.

ii. From and after the first day of the month following the Stabilization Date and through the end of the first twenty-five (25) Lease Years (or portion thereof) listed on Schedule 1 hereto (the “First Period”), an amount equal to the Base Rent on Schedule 1 for such Lease Year, provided however, all Base Rent due with respect to the First Period which is payable through the end of the first Fifteen (15) Lease Years shall be deferred and shall be payable in accordance with the terms of Section 3.10 (all such deferred Base Rent being referred to as “Deferred First Period Rent”).

iii. For each Lease Year commencing on the First Appraisal Date and continuing for a period of fifteen (15) Lease Years thereafter (the “Second Period”), an amount per annum equal to the greater of (x) the Base Rent Floor determined as of the First Appraisal Date or (y) \$3,889,481 less PILOT due in the last year of the First Period before reduction for any abatement that may be operable, as escalated in accordance with the next succeeding sentence. Base Rent for the Second Period shall escalate on April 4, 2031 and April 4, 2036 by the greater of (x) fifteen percent (15%) of the Base Rent set for the prior five (5) Lease Years or (y) the percentage of increase, if any, of the Consumer Price Index as determined for the month in which the applicable escalation date occurs over the Consumer Price Index for the last month of the prior five (5) Lease Year period (i.e., March, 2026 and March, 2031, respectively).

iv. For each Lease Year commencing on April 4, 2041 and continuing for a period of fifteen (15) Lease Years thereafter (the “Third Period”), an amount per annum equal to the Base Rent Floor determined as of the first day of the Third Period, as escalated in accordance with the next succeeding sentence. Base Rent for the Third Period shall escalate on April 4, 2046 and April 4, 2051 by the greater of (x) fifteen percent (15%) of the Base Rent set for the prior five (5) Lease Years or (y) the percentage of increase, if any, of the Consumer Price Index as determined for the month in which the applicable escalation date occurs over the Consumer Price Index for the last month of the prior five (5) Lease Year period (i.e., March, 2041 and March, 2046 respectively).

v. For each Lease Year commencing on April 4, 2056 and continuing thereafter until the Expiration Date (the “Fourth Period”), an amount per annum equal to the Base Rent Floor determined as of the first day of the Fourth Period, as escalated in accordance with the next succeeding sentence. Base Rent for the Fourth Period shall escalate on April 4, 2061 and April 4, 2066 by the greater of (x) fifteen percent (15%) of the Base Rent set for the prior five (5) Lease Years or (y) the percentage

of increase, if any, of the Consumer Price Index as determined for the month in which the applicable escalation date occurs over the Consumer Price Index for the last month of the prior five (5) Lease Year period (i.e., March, 2056 and March, 2061 respectively).

b. The Base Rent, other than the Deferred Construction Period Rent and Deferred First Period Rent, shall be payable in equal monthly installments in advance commencing on the Commencement Date and on the first day of each month thereafter during the Term. The Base Rent shall be payable in currency which at the time of payment is legal tender for public and private debts in the United States of America, and shall be payable at the office of Landlord set forth above or at such other place as Landlord shall direct by notice to Tenant. The Base Rent due for any Lease Year containing less than twelve (12) months, and any installment of the Base Rent due for any period of less than a full month, shall be appropriately apportioned.

c. For the purposes of calculating Base Rent for the Second Period, Third Period and Fourth Period, the fair market value of the Land shall be determined as of the First Appraisal Date and each successive Reappraisal Date, as the case may be. Such determination of fair market value shall be made by appraisal in the manner provided in Section 3.06 hereof, unless at least twelve months prior to the First Appraisal Date or any Reappraisal Date, Landlord and Tenant shall have agreed upon such fair market value.

d. During any Lease Year during the Second Period, Third Period and Fourth Period, Tenant shall receive an abatement in Base Rent equal to the amount of any NOI Rent paid to Landlord during such Lease Year; provided however, in no event shall the Base Rent paid during any such Lease Year be reduced by reason of such abatement to an amount less than an amount equal to the sum of (x) the Base Rent that would have been in effect during such Lease Year assuming that the Base Rent payable in the last Lease Year of the First Period, continued into the Second Period, Third Period and Fourth Period, escalating two percent (2%) annually each Lease Year after the last Lease Year of the First Period (such assumed Base Rent is herein referred to as the "Assumed Base Rent") plus (y) ten percent (10%) of Net Operating Income for such Lease Year, assuming, for purposes of this Section 3(d) only, in such calculation of Net Operating Income, the Base Rent under this Lease is the Assumed Base Rent (and not the actual Base Rent).

4. Section 3.02 is deleted in its entirety and replaced by the following:

3.02. Payments in Lieu of Taxes.

a. Subject to the terms of Section 3.02(d) below, for each Tax Year or portion thereof within the Term, Tenant shall pay to Landlord, without notice or demand, an annual sum (each such sum being hereinafter referred to as a "Payment in Lieu of Taxes" or "PILOT") equal to the actual Taxes for such Tax Year, payable in equal semi-annual installments during such Tax Year, in advance on the first day of each January and July. PILOT due for any period of less than six months shall be appropriately apportioned.

b. Within ten (10) days after the date on which the City Council of New York City (or any successor governmental agency) shall fix the tax rate applicable to real property comparable to the Premises and situated in the Borough of Manhattan, Tenant shall advise Landlord of its calculation of the PILOT for the forthcoming Tax Year, pursuant to Section 3.02(c) hereof. In the event that the City Council (or any successor governmental agency) shall not have fixed the tax rate for any Tax Year on or before the fifteenth day of the final month of the immediately preceding Tax Year and, therefore, Tenant shall be unable to calculate the PILOT for such Tax Year prior to the commencement of such Tax Year, Tenant shall pay semi-annually, as estimated PILOT, an amount equal to the amount required to be paid under this Article on account of PILOT for the second half of the preceding Tax Year. Within ten (10) days after the date on which the City Council shall fix the tax rate, Tenant shall pay to Landlord the amount ("Corrected PILOT"), if any, by which PILOT properly payable for the portion of such Tax Year in respect of which Tenant previously paid estimated PILOT exceeds the amount of such estimated PILOT. In the event that the amount of such estimated PILOT shall exceed the amount of PILOT properly payable for the portion of the Tax Year in respect of which Tenant previously paid such estimated PILOT, Tenant may credit such excess against (and deduct such excess from) future semi-annual payments of PILOT during such Tax Year, and to the extent if any, that the amount of Tenant's credit exceeds the next semi-annual installment of PILOT or if the semi-annual payments of PILOT for such Tax Year have been fully paid, Tenant may credit and deduct the amount of the excess from the semi-annual payments of PILOT payable with respect to the next Tax Year(s). Within sixty (60) days after the date on which Tenant shall have advised Landlord of its calculation of Corrected PILOT for a given Tax Year, Landlord shall advise Tenant as to whether Landlord agrees with Tenant's calculation. If Landlord shall advise Tenant that Landlord agrees with Tenant's calculation or if Landlord shall fail to advise Tenant of its determination within such sixty (60) day period, Tenant's calculation shall be the basis for PILOT for that Tax Year provided that the tax rate and any other such calculation does not change. If Landlord shall advise Tenant that it disagrees with Tenant's calculation, Tenant shall revise its calculation in accordance with Landlord's calculation, and Landlord's calculation shall be the basis for PILOT for that Tax Year, unless within ten (10) days after Landlord's advice to Tenant, Tenant shall notify Landlord of its disagreement with Landlord's calculation in which event Tenant shall pay PILOT in accordance with Landlord's calculation pending resolution of the dispute.

c. Tenant shall continue to pay the full amount of PILOT required under this Section 3.02, notwithstanding that Tenant may have instituted tax assessment reduction or other actions or proceedings pursuant to Section 4.06 hereof to reduce the assessed valuation of the Premises or any portion thereof. If any such tax reduction or other action or proceeding applicable to any Tax Year result in a final determination in Tenant's favor, (i) Tenant shall be entitled to a credit against future PILOT to the extent, if any, that the PILOT previously paid for the Tax Year for which such final determination was made exceeds the PILOT as so determined; (ii) if such final determination is made for the then current Tax Year, future payments of PILOT for said Tax Year shall be based on the PILOT as so determined. If, at the time Tenant is entitled to receive such a credit, the City of New York is paying interest on

refunds of Taxes, Tenant's credit shall include interest at the rate and for the applicable period then being paid by the City of New York. In no event, however, shall Tenant be entitled to any refund of any such excess from Landlord.

d. For so long as the Premises are exempt from Taxes by virtue of Landlord's ownership thereof, and provided that Tenant shall have satisfied the requirements of Section 3.02(f), then PILOT, shall be reduced by an amount equal to the abatement or exemption which would have applied to the Premises under Subsection 2.(a)(i) of Section 421-a (as such abatement or exemption may be restricted, limited or conditioned by any local law enacted pursuant to Subsection 2.(i) of Section 421-a), with respect to the period for which such abatement or exemption would have applied to the Premises if Tenant were the fee owner thereof. Annexed hereto as Exhibit 1 is a copy of the Agreement and Consent from the City of New York, confirming, inter alia, its consent to the aforesaid partial tax exemption.

e. In the event that (i) at the time in question the Premises are not exempt from Taxes by virtue of Landlord's ownership thereof, (ii) under applicable Requirements, an abatement of, or exemption from, Taxes would be applicable to the Premises if Tenant were the fee owner of the Premises, and (iii) Tenant shall have taken such steps as may be necessary so that the Premises in fact qualify for and receive the benefits of the abatement or exemption, then PILOT shall be reduced by an amount equal to the abatement or exemption applicable to the Premises as aforesaid, but only if and to the extent that the Taxes payable by Landlord are actually reduced on account of the abatement or exemption.

f. Tenant shall not be entitled to any reduction of PILOT pursuant to Section 3.02(d) unless Tenant shall establish to Landlord's reasonable satisfaction that Tenant has complied with and satisfied all conditions and requirements of all applicable Requirements that would be required in order to obtain for the Premises the benefits of the abatement or exemption referred to therein. Without limiting the generality of the foregoing, in the event that Tenant shall seek to take advantage of such exemption or abatement, Tenant shall (x) comply with the covenants in Article 45 and (y) establish to Landlord's reasonable satisfaction that it has satisfied all conditions and requirements thereof, including, without limitation, all applicable provisions of the Administrative Code of the City of New York and all applicable rules and regulations of the Department of Housing Preservation and Development of the City of New York, or any successor governmental agency that has the authority to administer same (the "Department"), and shall deliver to Landlord a letter addressed to the President and Chief Executive Officer of Landlord executed by the Commissioner of the Department or another authorized officer of the Department, certifying to Landlord that Tenant has complied with all requirements relating to said abatement or exemption, so that the Premises would be entitled to such abatement or exemption but for the fact that same are exempt from taxation on account of Landlord's ownership thereof. Landlord shall cooperate with Tenant's reasonable requests to execute such documents as are required under applicable Requirements to be executed by the fee owner of the Premises in connection with any application for the abatement and/or exemption from Taxes described in Section 3.02(d); provided however, Landlord shall not be liable for the payment of any costs or expenses in connection with any such application and Tenant shall

reimburse Landlord for any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements.

g. Landlord and Tenant agree that the assessed value of the Land in effect for the Tax Year preceding the Commencement of Construction of the Building shall be deemed to be \$3,335,800.

5. Section 3.04 is hereby deleted in its entirety and replace by the following:

3.04. Rental Generally. All amounts required to be paid by Tenant pursuant to this Lease, including, without limitation, Base Rent, Percentage Rent, Deferred Construction Period Rent, Deferred First Period Rent, NOI Rent, Capital Event Rent, PILOT, Impositions and Civic Facilities Payments (collectively, "Rental"), shall constitute rent under this Lease and shall, except as expressly set forth herein, be payable in the same manner as Base Rent; provided, however, that in the event Tenant shall submit its leasehold interest in the Premises to a condominium form of ownership, then, in accordance with Section 3.07(d) hereof, all of Tenant's obligations with respect to Percentage Rent shall be the direct obligations of the Unit Owners of the respective Commercial Units. Rental shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever except as specifically set forth in this Lease, so that this Lease shall yield, net, to Landlord, Rental in each year during the Term and that Tenant shall pay all costs, expenses and charges of every kind and nature relating to the Premises (except Taxes, if any and the cost of constructing and maintaining Landlord's Civic Facilities) which may arise or become due or payable during or after (but attributable to a period falling within) the Term.

6. The following new Section 3.08 shall be added after Section 3.07:

3.08. NOI Rent.

a. From the Commencement Date through the date upon which, all Capital Event Shortfalls have been paid, Tenant shall pay to Landlord, in the manner set forth below, an amount equal to ten percent (10%) of Net Operating Income (the "NOI Rent") for each calendar year, or portion thereof, within such period. NOI Rent shall be computed quarterly, and each payment of NOI Rent shall be applied in reduction of the Capital Event Shortfall then outstanding in the order of priority set forth in Section 3.10(b)(iii), (v), (vi), (vii) and (viii) of this Lease and the account balances of each such item described in Section 3.10(b) shall be reduced accordingly until such balances have been reduced to zero. The remaining ninety percent (90%) of Net Operating Income during such period shall be retained by Tenant and applied against amounts payable to Tenant pursuant to Section 3.10(b)(ii) and 3.10(b)(iv) of this Lease and the account balances of each such item described in Section 3.10(b) shall be reduced accordingly until such balances have been reduced to zero; provided however, that notwithstanding the reduction of such balances to zero, Tenant shall continue to receive the remaining ninety percent (90%) of Net Operating Income. Upon the payment in full of all Capital Event Shortfalls, Tenant

shall have no further obligation hereunder to pay NOI Rent and Landlord shall have no right to receive any portion of Net Operating Income received by Tenant thereafter.

b. Tenant shall deliver to Landlord as soon as practicable after the end of each calendar quarter, but in no event later than thirty (30) days thereafter, a statement (the "Quarterly NOI Rent Statement"), showing in reasonable detail Net Operating Income from the prior quarter. Based upon the Quarterly NOI Rent Statement submitted by Tenant to Landlord, Tenant shall pay to Landlord all NOI Rent due for such quarter. Such partial payment of NOI Rent shall be made by Tenant simultaneously with the submission to Landlord of the Quarterly NOI Rent Statement.

c. Tenant shall deliver to Landlord as soon as practicable after the end of each calendar year, but in no event later than one hundred twenty (120) days thereafter, a separate statement (the "Annual NOI Rent Statement") for such year showing Net Operating Income, together with the NOI Rent due for such year. If the Annual NOI Rent Statement shall show that the sums paid by Tenant as NOI Rent for the calendar year for which such Annual NOI Rent Statement is given were less than the NOI Rent payable by Tenant for such year, then Tenant shall pay to Landlord, together with the delivery to Landlord of the Annual NOI Rent Statement, the amount of such deficiency, and if the Annual NOI Rent Statement shall show that the sums paid by Tenant as NOI Rent for such calendar year exceeded the NOI Rent payable by Tenant for such year, Landlord shall permit Tenant to offset the amount of such excess, without interest, against subsequent payments of NOI Rent.

7. Section 3.08 shall be renumbered Section 3.09, deleted and superseded in its entirety by the following:

3.09. Records for Percentage Rent and NOI Rent. In connection with the payment by Tenant of Percentage Rent and NOI Rent the following provisions shall apply:

a. Tenant shall at all times keep and maintain at an office located in New York City or Nassau County, New York, books and records prepared on the basis required under Section 3.09(b), showing in reasonable detail the amount of Gross Non-Residential Revenue and Net Operating Income. Unless consented to by Landlord, such books and records relating to any calendar year shall not be destroyed or disposed of for a period of four (4) years after the end of such year. Landlord or its representatives shall have the right on reasonable notice during regular business hours to examine, audit and/or photocopy all such books and records. For the purposes of this Section 3.09(a), reasonable notice shall mean notice given not less than ten (10) Business Days prior to the examination date designated in Landlord's notice. If an audit by Landlord with respect to any year is not commenced within the aforesaid four (4) year period, the computation of the Percentage Rent and NOI Rent paid by Tenant for such year shall not thereafter be subject to Landlord's audit and shall conclusively be deemed correct.

b. All Financial Statements required under this Lease shall be (i) prepared on a cash basis consistently applied and (ii) verified by the chief financial officer or

managing partner of Tenant or the Affiliate which is the managing agent for the Premises, or if the managing partner of Tenant or such Affiliate is not an individual, by the chief financial officer of such managing partner or such Affiliate, as being true, correct and complete to the best of his knowledge. All Annual Financial Statements shall be certified by an independent public accounting firm (the "C.P.A.") which is (x) an accounting firm having at least eight (8) partners, or (y) a firm approved by Landlord, which approval shall not be unreasonably withheld. Such certification shall include, without limitation, a statement by the C.P.A. that an examination of Tenant's books and records has been conducted by the C.P.A. in accordance with generally accepted auditing standards consistently applied and that the Annual Financial Statements have been prepared on a cash basis in accordance with accounting principles consistently applied.

c. If Landlord shall elect to conduct an audit of Tenant's books and records and such audit discloses an underpayment of Percentage Rent or NOI Rent, subject to Section 3.09(e), Tenant shall pay to Landlord within thirty (30) days after demand the amount of such deficiency, plus interest thereon at the Involuntary Rate from the date upon which such sum was due to the date of actual payment. In addition, if such deficiency shall be in excess of three and one-half percent (3.5%) of the amount alleged by Tenant to be payable, Tenant shall pay to Landlord within thirty (30) days after demand all reasonable costs incurred by Landlord in connection with such audit.

d. If Tenant or an Affiliate of Tenant shall themselves use or occupy any non-residential portion of the Building, there shall be imputed as income the fair market rental value of the portion of the Building so occupied by Tenant or such Affiliate, as the case may be, provided, however, that if Tenant or an Affiliate shall use or occupy any nonresidential portion of the Building for the purpose of maintaining an office to manage the Building and/or other buildings owned or operated by Tenant within the Project Area, income shall only be imputed to the portion used or occupied in excess of 1,200 square feet. Such income shall be deemed to be, and construed as, Gross Non-Residential Revenue for all purposes of this Lease. Fair market rental value as used in this Lease shall mean the rental which would be paid under a sublease (commencing at the same time as Tenant's or such Affiliate's use or occupancy) with a non-related Person leasing a similar amount of space in the same Building, for the same term, for a similar purpose and in a similar location in the Building, and shall include, inter alia, all fixed, percentage and escalation rents which prudent owners of like buildings in the Borough of Manhattan would have included under such sublease as of the date the rental under the sublease is deemed to have commenced in accordance with this Section 3.09(d).

e. If at any time and for any reason there shall be a dispute as to the determination of Gross Non-Residential Revenue, Net Operating Income or fair market rental value, such dispute shall be determined by arbitration pursuant to Article 36 hereof. Pending resolution of the dispute, Tenant's determination of Gross Non-Residential Revenue or Net Operating Income shall prevail and Tenant shall pay Percentage Rent and NOI Rent, as the case may be, based upon such determination. Without limitation of the foregoing, any deficiency, interest and expenses which may be payable by Tenant to Landlord pursuant to Section 3.09(c) shall not be payable if disputed by Tenant unless and until determined by such arbitration. If

such arbitration determines an underpayment by Tenant, Tenant shall pay the amount of such underpayment, plus interest thereon at the Involuntary Rate, within ten (10) days after demand.

8. The following new Section 3.10 shall be added after Section 3.09:

3.10. Capital Event Rent.

a. The amounts listed below shall be herein referred to as “Capital Event Rent” and shall be part of the Rental due under this Lease, payable in accordance with the further provisions of this Section 3.10:

- i. Landlord’s Contribution; plus
- ii. A cumulative annual return of 6.00% on the Landlord’s Contribution; plus
- iii. The Deferred Construction Period Rent; plus
- iv. The Deferred First Period Rent; plus
- v. PILOST; plus
- vi. The Landlord Kicker.

b. Capital Event Rent shall be payable from Net Capital Event Proceeds payable to Landlord as hereinafter provided, until all Capital Event Rent is paid in full. Upon all Capital Events through and including the Capital Event Rent Termination Date, Net Capital Event Proceeds shall be applied as follows:

- i. First to repay the indebtedness secured by the existing Mortgage, to the extent required to be paid in connection with such Capital Event;
- ii. Second, to Tenant, to pay the Tenant’s Contribution;
- iii. Third, to Landlord, to pay the Landlord’s Contribution;
- iv. Fourth, to Tenant, to provide Tenant with a nine and three-fourths percent (9.75%) cumulative annual return on the Tenant’s Contribution;
- v. Fifth, to Landlord, to provide Landlord with a six percent (6.00%) cumulative annual return on the Landlord’s Contribution;
- vi. Sixth, to Landlord, to pay all Deferred Construction Period Rent;
- vii. Seventh, to Landlord, to pay all Deferred First Period Rent;
- viii. Eighth, to Landlord, to pay all PILOST; and

ix. Ninth, any remaining Net Capital Event Proceeds to be divided ninety percent (90%) to Tenant and ten percent (10%) to Landlord (Landlord's ten percent (10%) share of any remaining Net Capital Event Proceeds being herein referred to as the "Landlord Kicker"); provided however, Tenant's obligation to pay the Landlord Kicker shall terminate immediately after the earlier to occur of (such earlier occurrence being herein referred to as the "Capital Event Rent Termination Date"):

(1) the first Qualified Capital Event occurring after the payment in full of all Capital Event Shortfalls, whether the same was paid to Landlord from Capital Event Rent attributable to prior Capital Events and/or from NOI Rent; or

(2) the First Sale.

c. Prior to the application of Net Capital Event Proceeds pursuant to Section 3.10(b), the amounts described in Section 3.10(b)(i) through (viii) shall first be reduced: (x) in accordance with Section 3.08(a) with respect to payments of NOI Rent made prior to the occurrence of the Capital Event generating such Net Capital Event Proceeds and (y) in accordance with Section 3.10(d) with respect to payments of Capital Event Rent made prior to the occurrence of the Capital Event generating such Net Capital Event Proceeds; it being the intention of Landlord and Tenant that Net Operating Income and Net Capital Event Proceeds received by Landlord and Tenant pursuant to Section 3.08(a) and 3.10(b) be applied in reduction of the unpaid amounts described in Section 3.10(b)(i) through (viii).

d. Prior to and including the Capital Event Rent Termination Date, Net Capital Event Proceeds shall be applied in reduction of the amounts described in Section 3.10(b)(i) through (viii) above in the order of priority set forth therein and the account balances of each such item described in Section 3.10(b) shall be reduced accordingly until such balances have been reduced to zero.

e. Upon the occurrence of the Capital Event Rent Termination Date, Tenant shall have no further obligation hereunder to pay Capital Event Rent and Landlord shall have no right to receive any portion of Net Capital Event Proceeds received by Tenant thereafter.

f. After the First Sale, the unpaid balance of any Capital Event Shortfall shall be payable solely from NOI Rent, which shall be applied in reduction of the Capital Event Shortfall then outstanding pursuant to Section 3.08(a) of this Lease.

g. Not less than twenty (20) days prior to a Capital Event, Tenant shall provide Landlord with a certification (the "Estimated Capital Event Statement") which (x) describes in reasonable detail the proposed Capital Event, (y) certifies whether or not the transaction constitutes a Qualified Capital Event and (z) shows Tenant's calculation of estimated Net Capital Event Proceeds and proposed disbursement pursuant to this Section 3.10, which Estimated Capital Event Statement shall be certified to be true, correct and complete by the chief

financial officer or managing partner of Tenant. In addition, such Estimated Capital Event Statement shall, in the case of a Sale or refinancing, be accompanied by an appraisal of the value of the Premises prepared by a third party appraiser reasonably acceptable to Landlord.. Not more than five (5) business days after the Capital Event, Tenant shall provide Landlord with a final Capital Event Statement (the "Final Capital Event Statement") showing the final calculation of Net Capital Event Proceeds and proposed disbursement pursuant to this Section 3.10, certified to be true, correct and complete by the chief financial officer or managing partner of Tenant.

h. Landlord shall have ten (10) business days to dispute any item contained in the Estimated Capital Event Statement or the Final Capital Event Statement. If Landlord fails to deliver to Tenant a notice disputing the Estimated Capital Event Statement or the Final Capital Event Statement within ten (10) business days after its receipt of such Estimated Capital Event Statement or Final Capital Event Statement, Landlord shall be deemed to have accepted the facts certified therein.

i. If at any time and for any reason there shall be a dispute as to the determination of the facts stated in the Capital Event Statement or the Capital Event Rent payable in connection with such Capital Event, such dispute shall be determined by arbitration pursuant to Article 36 hereof. Pending resolution of the dispute, Tenant's determination of Capital Event Rent payable in connection with such Capital Event as set forth in its Capital Event Statement shall control and Tenant shall pay Landlord Capital Event Rent based upon such determination. If such arbitration determines an underpayment by Tenant, Tenant shall pay the amount of such underpayment, plus interest thereon at the Involuntary Rate, within ten (10) days after demand.

9. Sections 10.01(a) and 10.01(b) are hereby amended such that it shall be additional conditions to the effectiveness of any Transfer permitted under Sections 10.01(a) and 10.01(b) with or without the consent of Landlord that:

a. Landlord shall have received all Capital Event Rent payable in connection with such Transfer pursuant to Section 3.10(b) simultaneously with or prior to such Transfer; and

b. Prior to the payment in full of all Capital Event Shortfalls, Anthony A. Albanese, Vincent M. Albanese, Russell C. Albanese and/or Christopher V. Albanese shall at all times both directly or indirectly (x) control Tenant and (y) maintain a five percent or more ownership interest in Tenant.

10. Section 10.01(f) is deleted and replaced in its entirety by the following:

(f) From and after Substantial Completion of the Building or the payment in full of all Capital Event Rent and Capital Event Shortfalls, whichever is later, Landlord's consent shall not be required prior to any assignment by Tenant of its interest in this

Lease to the Apartment Corporation pursuant to a Cooperative Plan, provided no Default in the payment of Rental (whether or not notice of such Default has been delivered to Tenant) and no other Default as to which notice shall have been given shall have occurred and be continuing hereunder, and Tenant shall have delivered to Landlord (w) a true and correct copy of such Cooperative Plan and any amendments, modifications and supplements thereto, (x) a true and correct copy of the letter of acceptance of the Cooperative Plan issued by the New York State Department of Law, (y) a true and correct copy of the letter accepting the amendment declaring the Cooperative Plan effective issued by the New York State Department of Law and (z) such other documents in connection therewith as may be reasonably requested by Landlord.

11. Section 10.10 is hereby amended by adding the following subsections (e) and (f) at the end thereof:

- (e) The obligation to repay the Landlord's Contribution, the 6% cumulative annual return thereon and the Landlord Kicker, shall not survive a foreclosure of the Mortgage or other acquisition by the Mortgagee, its designee or a purchaser at foreclosure of Tenant's interest in this Lease, unless such Person is an Affiliate of the Tenant named herein, in which case such obligation shall survive.
- (f) No notice of default delivered to Tenant under the Mortgage shall be effective unless a copy thereof shall be simultaneously delivered to Landlord in the manner set for the delivery of notices pursuant to this Lease.

12. Section 11.05(c) is deleted and replaced in its entirety by the following:

- (c) By reason of the ownership of the Building by Landlord, certain sales and compensating use taxes will not be incurred in connection with the construction of the Building. Tenant shall pay to Landlord, as payments in lieu of such sales and compensating use taxes, One Million Five Hundred Eleven Thousand Seven Hundred Twenty-Five Dollars and Fifty Cents (\$1,511,725.50); (such payment in lieu of sales and compensating use taxes is herein referred to as "PILOST"); provided however, the balance of all PILOST due on the Amendment Date in amount of One Million Three Hundred Twenty-Three Thousand Two Hundred Eighty-Eight Dollars (\$1,323,288.00) shall be deferred and shall be

payable in accordance with Section 3.10. Landlord acknowledges that Tenant has paid on account of PILOST prior to the Amendment Date the amount of One Hundred Eight-Eight Thousand Four Hundred Thirty-Seven Dollars and Fifty Cents (\$188,437.50). In the event Tenant is compelled by any Governmental Authority to pay any such sales or compensating use tax in respect of materials incorporated (or to be incorporated) in the Building, then, provided that Tenant has paid all amounts on account of PILOST pursuant to Section 3.10(b)(viii) which have theretofore become due and payable, Tenant shall receive a credit against the unpaid balance of PILOST and the amount payable pursuant to Section 3.10(b)(viii) shall be reduced accordingly (and to the extent such credit exceeds such unpaid balance, against the next installment(s) of Base Rent), in an amount equal to the amount of such taxes (including interest and penalties) which Tenant has been compelled to pay, provided that (i) each Construction Agreement contains the provision set forth in Section 11.05(b), (ii) Tenant has notified Landlord prior to payment of such taxes and promptly upon receipt of notice of claim that a claim has been made therefor, and (iii) if permitted by applicable law, Landlord has the opportunity to contest the imposition of same provided that neither Tenant's interest in the Premises nor any income derived by Tenant therefrom would, by reason of such contest, be forfeited or lost, or subject to any lien, encumbrance or charge, and Tenant would not by reason thereof be subject to any civil or criminal liability. At Tenant's request, Landlord shall cooperate and assist Tenant's efforts to establish to any Governmental Authority that by reason of Landlord's ownership of the Building, no sales or compensating use tax is payable in connection with the materials incorporated or to be incorporated into the Building. If Tenant is required to institute any proceedings against any Governmental Authority to obtain a refund of any sales or compensating use tax paid by Tenant in connection with the materials incorporated into the Building, Landlord shall join in the proceedings provided that the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought in the name of Landlord. Tenant shall reimburse Landlord for any and all costs and expenses that Landlord may reasonably incur in connection with providing such cooperation and assistance or in connection with such proceedings, including reasonable attorneys fees and disbursements. Promptly after such date upon which the entire Landlord's Contribution (\$9,000,000) has been funded, Landlord will return any portion of the PILOST which has been paid prior to the Amendment Date,

provided such PILOST is not yet then payable pursuant to the terms of this Lease.

13. Section 11.12(a) is deleted and replaced in its entirety by the following:

11.12 Design/Construction Period Letter of Credit.

- (a) Tenant has secured its obligations under this Lease, including, without limitation, Tenant's obligation for the payment of Rental, by depositing with Landlord a clean irrevocable letter of credit (the "Design/Construction Period Letter of Credit") drawn in favor of Landlord, in form and content acceptable to Landlord, and having a term of not less than one (1) year, payable in United States dollars upon presentation of one or more sight drafts, issued by and drawn on a recognized commercial bank or trust company which is a member of the New York Clearing House Association or which is satisfactory to Landlord. The initial amount of the Design/Construction Period Letter of Credit shall be Three Million Three Hundred Fifty Thousand Dollars (\$3,350,000.00). Except as hereinafter provided, the Design/Construction Period Letter of Credit shall be renewed or replaced without decrease in amount each and every year as provided herein. Each Replacement Letter of Credit shall be delivered to Landlord not less than thirty (30) days prior to the expiration of the Design/Construction Period Letter of Credit or then current Replacement Letter of Credit. The failure of Tenant to renew the Design/Construction Period Letter of Credit or any Replacement Letter of Credit in accordance with this Section 11.12 and Article 43 hereof shall entitle Landlord to present the Design/Construction Period Letter of Credit or Replacement Letter of Credit for payment, in which event Landlord shall hold the payments in an interest bearing account and apply the proceeds thereof (together with any interest earned thereon) as provided in Section 11.12(b). If Landlord shall obtain the proceeds of the Letter of Credit, Tenant's failure to renew the Letter of Credit shall not constitute a Default under this Lease. Notwithstanding the foregoing, provided (i) Landlord shall not have presented the Design/Construction Period Letter of Credit or any Replacement Letter of Credit for payment (ii) no Default in the payment of Rental (whether or not notice of such Default has been delivered to Tenant) and no other Default as to which notice shall have been given shall have occurred and be continuing hereunder, then (a) at the expiration of seven (7) months from the date of Re-commencement of Construction or at any time thereafter and prior to Substantial Completion, Tenant shall have the right to reduce

the Design/Construction Period Letter of Credit to Two Million Two Hundred Thirty Three Thousand Dollars (\$2,233,000.00), (b) at the expiration of nineteen (19) months from the date of Re-commencement of Construction or at any time thereafter, and prior to Substantial Completion, Tenant shall have the right to reduce the Design/Construction Period Letter of Credit to One Million One Hundred Seventeen Thousand Dollars (\$1,117,000.00), (c) at any time after Substantial Completion, Tenant shall have the right to reduce the Design/Construction Period Letter of Credit to an amount equal to twice the amount certified by the Architects as the amount required to effect final Completion of the Building in accordance with the Construction Documents, and (d) upon a certification of the Architect that final Completion of the Building in accordance with the Construction Documents has been achieved, Tenant shall have the right to terminate the Design/Construction Period Letter of Credit. In such event as referred to in clauses "a," "b," "c" and "d" of this Section 11.12, Landlord shall provide Tenant with such authorization to so reduce the Design/Construction Period Letter of Credit as the issuer thereof may require.

14. Section 41.01(a) is deleted in its entirety and replaced by the following:

- (a) Upon or after Substantial Completion of the Building, or the payment in full of all Capital Event Rent and all Capital Event Shortfalls, whichever is later, Tenant's leasehold estate in the Premises under this Lease may be submitted to the condominium form of ownership pursuant to the Condominium Act and the terms and provisions of Exhibit F annexed hereto and made a part hereof.

15. The following new Article 44 shall be added at the end of the Lease:

Article 44

Landlord's Environmental Guidelines Contributions

44.01 Landlord's Contribution. Landlord agrees that (i) if Tenant is not then in monetary or material non-monetary default under the Lease beyond any applicable grace and/or notice periods and (ii) upon Tenant's satisfaction of the Contribution Funding Conditions, Landlord shall pay to Tenant the amount of \$9,000,000, as Landlord's contribution to the construction of the Building consistent with the Environmental Guidelines (the amount advanced by Landlord and not repaid from time to time is herein referred to as the "Landlord's Contribution"), which shall be advanced by Landlord to Tenant in accordance with the provisions of Section 44.03.

44.02 Contribution Funding Conditions. For all purposes in this Lease, the term "Contribution Funding Conditions" shall mean Landlord's receipt of evidence reasonably satisfactory to Landlord, that:

a. Tenant's members have made cash contributions to Tenant in an amount not less than \$32,964,000 and Tenant has delivered to Landlord a statement from the chief financial officer of Tenant certifying that such contributions have been made;

b. An Institutional Lender has committed to lend not less than \$75,000,000 in connection with the construction of the Building or any lesser sum agreed upon by Landlord; and

c. The Mortgagee has consented to this Amendment.

44.03 Advances of Landlord's Contribution. Provided the Contribution Funding Conditions have been satisfied, Landlord agrees to disburse portions of Landlord's Contribution from time to time by advancing to Tenant an amount equal to the product of (x) the amount of each requisition for a loan advance submitted to, and approved by, Tenant's Institutional Lender multiplied by (y) a fraction, the numerator of which is \$9,000,000 and the denominator of which is the entire construction loan amount plus \$9,000,000. Such Landlord funding shall occur simultaneously with the funding by Tenant's Institutional Lender of the balance of such requisition, until Landlord shall have advanced to Tenant the aggregate amount of \$9,000,000.

16. The following new Article 45 shall be added at the end of the Lease:

Article 45 **Rent Regulations**

45.01. Until the Release Date, as defined in Section 45.02 hereof, Tenant, on a voluntary basis and solely as a condition precedent to receiving benefits (as set forth in Section 3.02(f) hereof) equivalent to benefits available under Section 421-a, shall enjoy such rights and observe such requirements pertaining to the rental of dwelling units in the Building, as would be available or applicable to the owner of the Building pursuant to Chapter 4 of Title 26 of the Administrative Code of New York City, and the Rent Stabilization Code promulgated by the New York State Division of Housing and Community Renewal ("DHCR"), as well as regulations promulgated pursuant thereto, and all other applicable laws and regulations now in effect or hereafter enacted, all as heretofore and hereafter amended (collectively, the "Rent Regulations"), had construction of the Building commenced thirty (30) days after the Commencement Date and had the Building received partial tax exemption under Section 421-a and consequently been subject to rent stabilization under applicable law and regulation.

45.02 Tenant shall submit itself to the jurisdiction of the DHCR, or any successor agency administered by the State of New York or New York City having jurisdiction over rent stabilized buildings (the "Regulatory Body") solely as a condition precedent to receiving benefits (as set

forth in Section 3.02(f) hereof) equivalent to benefits currently available under Section 421-a. Upon submitting to the jurisdiction of the Regulatory Body, Tenant shall comply with all of the requirements thereof and shall remain subject to the jurisdiction thereof, or of any successor association or agency, for as long as the owner of the Building would be required to so comply and to remain subject to such jurisdiction, had construction of the Building commenced thirty (30) days after the Commencement Date and had the Building received partial tax exemption under Section 421-a and consequently had been subject to rent stabilization under applicable law and regulation. The date as of which the owner of the Building would no longer be required to remain subject to jurisdiction of the Regulatory Body and comply with all of the requirements thereof, had construction of the Building commenced thirty (30) days after the Commencement Date and had the Building received partial tax exemption under Section 421-a and consequently had been subject to rent stabilization under applicable law and regulation is herein referred to as the "Release Date".

45.03 In the event that Tenant fails to subject the Building to the jurisdiction of the Regulatory Body in accordance with the provisions of the preceding Section 45.02 by the date of issuance of a temporary or permanent Certificate of Occupancy for any dwelling unit in the Building or by any later date established in accordance with the requirements of the Regulatory Body, Tenant shall nevertheless comply with all of the requirements of the Rent Regulations as if Tenant had submitted to the jurisdiction of such Regulatory Body (but only to the extent that and for so long as Tenant would be subject to such Rent Regulations had Tenant been subject to the jurisdiction of such Regulatory Body) solely as a condition of the Building receiving partial tax exemption under Section 421-a, and in such case Tenant shall be subject to the jurisdiction of an impartial rent officer ("Rent Officer") (who shall not be a tenant in the Project Area), appointed by Landlord, who shall administer a program of rent regulations which shall be the same as the Rent Regulations administered by the Regulatory Body (the "Rent Program"). The authority of the Rent Officer shall be limited to implementing and administering the Rent Program. In such event, Tenant shall pay to Landlord administration fees, as reasonably determined by Landlord, to cover the costs and expenses of the implementation and administration of the Rent Program by the Rent Officer, and such fees shall constitute Rental hereunder. Tenant in no manner waives, limits or otherwise compromises its right to resort to any and all applicable administrative or judicial actions, proceedings and/or remedies now or hereinafter in effect for the resolution of disputes pertaining to the Rent Program or the administration thereof.

45.04 Noncompliance by Tenant with the Rent Regulations or with the Rent Program, as the case may be, shall cause Tenant to be subjected to such sanctions and penalties as would be imposed by the Regulatory Body, had the Building received partial tax exemption under Section 421-a and had the owner failed to comply with the Rent Regulations, regardless of whether Tenant is actually subject to the jurisdiction of the Regulatory Body or whether the Rent Program is being implemented and administered by the Rent Officer. In the event Tenant fails to remain subject to the jurisdiction of the Regulatory Body, or fails to participate in the Rent Program, as the case may be, prior to the Release Date, Tenant shall become subject to such sanctions and

penalties as are then applicable to owners of buildings receiving partial tax exemption under Section 421-a upon such termination or revocation.

45.05 Solely as a condition precedent to receiving benefits (as set forth in Section 3.02(f) hereof) equivalent to benefits available under Section 421-a, Tenant shall comply with all of the requirements of Section 421-a that would be applicable to a project receiving equivalent benefits and the rules and regulations promulgated thereunder. In the event that Tenant shall either commit an act or fail to commit an act, which act or failure would result in revocation, discontinuance or diminution of tax benefits under Section 421-a had the Building received partial tax exemption under such Section, then the PILOT payable under Section 3.02 hereof shall be increased to an amount equal to the real estate taxes which would be payable by the owner of the Premises in the case of such revocation, discontinuance or diminution, were Tenant the fee owner thereof and had the Building received partial tax exemption under Section 421-a. Prior to payment of any such increase, Tenant shall have the right to contest or challenge the same in the same manner as is provided for contest or challenge of the revocation, discontinuance or diminution of partial tax exemption benefits under Section 421-a and the rules and regulations promulgated thereunder.

45.06 Whether subject to the Rent Regulations or the Rent Program, the initial monthly rents permitted to be charged by Tenant to Subtenants of dwelling units in the Building shall not exceed the aggregate maximum allowable monthly rent roll for the entire Building as determined by the New York City Department of Housing Preservation and Development or any successor agency having such authority, as if the Building had received partial tax exemption under Section 421-a and consequently been subject to rent stabilization under applicable law and regulation, provided that, in addition to such allowable monthly rents, Tenant shall be entitled to charge amounts equal to Civic Facilities Payments as set forth in Section 45.07.

45.07 Notwithstanding anything to the contrary contained in Sections 45.01 through Section 45.06 hereof, Tenant, in addition to any rents permitted to be charged and collected pursuant to the Rent Regulations, the Rent Program or the Requirements of Governmental Authorities, shall be permitted to charge and collect from all Subtenants in the aggregate an amount equal to the Civic Facilities Payment by Tenant pursuant to Section 26.05(a). Such charge shall be based on each Subtenant's pro rata share of the Civic Facilities Payment, apportioned according to the size of the unit.

45.08 Tenant's obligations under this Article 45 shall cease upon the Release Date.

45.09 Each Sublease for a dwelling unit in the Building shall contain a provision, in such form as may be required by the Rent Regulations or by any applicable Requirement advising the Subtenant that rents for the unit are regulated, pursuant to the terms of this Lease, under the Rent Regulations or the Rent Program, as the case may be. Tenant shall make available to such Subtenant a copy of all information regarding the Rent Regulations or Rent Program which is required to be delivered to such Subtenant pursuant thereto.

17. The parties agree that the prompt re-commencement of construction and completion of the Building by Tenant pursuant to the terms of the Lease is a material inducement to Landlord entering into this Amendment. Consequently, the parties agree as follows:

a. The following provisions of this Amendment are expressly conditioned upon the re-commencement of substantial on-site construction of the Building (the "Re-commencement of Construction") on or prior to December 31, 2002 (the "Re-commencement Outside Date"): Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16. In the event the Re-commencement of Construction has not occurred on or before the Re-commencement Outside Date and such failure shall continue for thirty (30) days after notice from Landlord to Tenant, the foregoing Sections shall be null and void and of no force and effect, and any provisions of the Original Lease which are were to be modified by the foregoing Sections shall remain unmodified and in full force and effect; and

b. The following events shall be additional Events of Default pursuant to Section 24.01 of the Lease: if the Re-commencement of Construction shall not have occurred on or before the Re-commencement Outside Date and such failure shall continue for thirty (30) days after notice from Landlord to Tenant, or (ii) Substantial Completion of the Building shall not have occurred within twenty-four (24) months from the Re-commencement Outside Date (subject to Unavoidable Delays) and such failure shall continue for ten (10) days after notice from Landlord to Tenant.

18. Further Lease Amendments.

a. The parties have entered into this Amendment in order to enable Tenant to proceed with construction of the Building despite the adverse impact of the September 11, 2001 attack on the World Trade Center. In the event, on one or more occasions, the Project obtains the benefit of tax exempt financing or additional real estate abatement programs more favorable than those described in this Amendment, appropriate adjustments will be made to the terms of the Lease to reflect the economic impact thereof, including, without limitation, the accelerated repayment of Landlord's Contribution.

b. The parties acknowledge that the Liberty Bond program recently authorized by PL 107-147, together with additional incentive programs for residential construction that are likely to be created in the near future by the State and City, would, in all likelihood, also enable construction of the Building to proceed. However, the parties wish to proceed without further delay in resuming construction of the Building and therefore have decided to proceed in accordance with this Amendment, in advance of the Liberty Bond program or other residential development incentives being in place. The parties acknowledge their mutual interest in obtaining financing for the initial development, design and construction of the Building (the "Project") through Liberty Bonds and will both endeavor to ensure that the Project qualifies for such financing and for additional new incentives created by the State and City. In furtherance of this Section 18, Landlord and Tenant have entered into a letter agreement as of the date of this Amendment, which, inter alia, outlines certain further amendments to the Lease

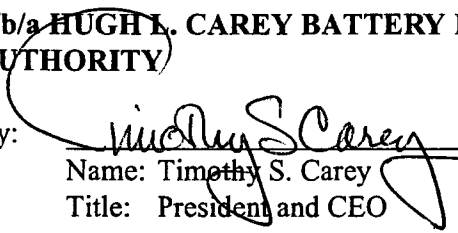
which the parties agree to make should the Liberty Bonds become available. The parties agree that, if the Liberty Bonds are available for the Project, a Lease amendment executed pursuant to the foregoing letter agreement would constitute an appropriate adjustment in the Lease terms pursuant to Section 18(a) above.

19. If the Mortgagee requires that additional mortgages encumbering the Lease be recorded with the New York City Register, Landlord agrees to reasonably cooperate with Tenant to restructure the Lease consistent with the lease structure described in that certain Advisory Opinion of the New York State Department of Taxation and Finance known as TSB-A-95 (1)R, in order that said mortgage may be exempt from the mortgage recording tax. Landlord agrees to provide such cooperation in a timely manner so as not to impede the construction of the Building.

20. Except as hereinabove amended, all of the terms, covenants and conditions of the Contract shall remain unmodified and in full force and effect.

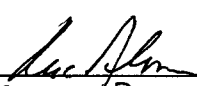
IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment on the date first above written.

BATTERY PARK CITY AUTHORITY
d/b/a **HUGHL. CAREY BATTERY PARK CITY**
AUTHORITY

By: 
Name: Timothy S. Carey
Title: President and CEO

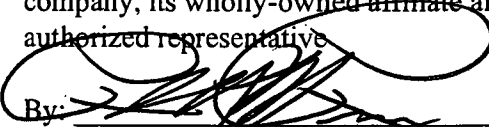
RIVER TERRACE ASSOCIATES, LLC

By: ALBANESE BPC, LLC, a member

By: 
Name: RUSSELL C. ALBANESE
Title: Manager

By: THE NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY, a member

By: Northwestern Investment Management
Company, LLC, a Delaware limited liability
company, its wholly-owned affiliate and
authorized representative

By: 
Name: Robert M. Ruess
Title: Managing Director



SCHEDULE 1
FIRST PERIOD RENT

Lease Year¹	First Period Base Rent
3 (Deferred)	\$181,465
4 (Deferred)	\$185,094
5 (Deferred)	\$188,796
6 (Deferred)	\$192,572
7 (Deferred)	\$196,424
8 (Deferred)	\$200,352
9 (Deferred)	\$204,359
10 (Deferred)	\$208,446
11 (Deferred)	\$212,615
12 (Deferred)	\$216,867
13 (Deferred)	\$221,205
14 (Deferred)	\$225,629
15 (Deferred)	\$230,141
16	\$234,744
17	\$239,439
18	\$244,228
19	\$249,113
20	\$254,095
21	\$259,177
22	\$264,360
23	\$269,647
24	\$275,040
25	\$280,541

¹ Deferred First Period Rent shall only be payable from and after the first day of the month following the Stabilization Date, regardless of which Lease Year in which the Stabilization Date occurs. All Deferred First Period Rent listed for Lease Years prior to the Lease Year for which the Stabilization Date occurs shall be disregarded. Further, Deferred First Period Rent for the first Lease Year in which the Stabilization Date occurs shall be pro-rated and payable only for the period from the first day of the month following the Stabilization Date through the last day of such Lease Year.

Exhibit 1

Consent and Agreement from NYC

AGREEMENT AND CONSENT
PURSUANT TO SETTLEMENT AGREEMENT
FOR SITE 18A GREEN BUILDING DEVELOPMENT

AGREEMENT AND CONSENT PURSUANT TO SETTLEMENT
AGREEMENT FOR SITE 18A GREEN BUILDING DEVELOPMENT, dated as of May 14, 2002, between THE CITY OF NEW YORK (the "City"), a municipal corporation of the State of New York, and the BATTERY PARK CITY AUTHORITY d/b/a Hugh L. Carey Battery Park City Authority (the "Authority"), a public benefit corporation of the State of New York.

WITNESSETH:

WHEREAS, the City and the New York State Urban Development Corporation ("UDC") entered into a Settlement Agreement, dated as of June 6, 1980 (the "Settlement Agreement") regarding the premises (the "Project Area") generally known as Battery Park City (the "Project"); and

WHEREAS, UDC, among other things, assigned all of its right, title and interest in and to the Settlement Agreement to the Authority and the Authority has assumed the same pursuant to an Assignment and Assumption Agreement, dated August 12, 1986; and

WHEREAS, the City and the Authority have amended the Settlement Agreement pursuant to an Amendment to Settlement Agreement dated as of August 15, 1986, between the City and the Authority (the "1986 Amendment") and have amended or otherwise modified the Settlement Agreement by an Agreement for Certain Payments and an Infrastructure Agreement and Consent, each dated June 28, 1989, by an Agreement and Consent made on December 30, 1989 (the "December 30, 1989 Agreement and Consent"), by an Amendment and Agreement and Consent Pursuant to Settlement Agreement dated as of May 18, 1990, by an Amendment and Agreement and Consent Pursuant to Settlement Agreement dated as of October 15, 1993, by a Second Infrastructure Agreement and Consent, dated as of October 25, 1993, by an Agreement and Consent Pursuant to Settlement Agreement dated as of April 10, 1995, by a 1996 Agreement and Consent Pursuant to Settlement Agreement dated as of October 1, 1996, by a 1998 Agreement and Consent Pursuant to Settlement Agreement dated as of May 1, 1998, by a Third Infrastructure Agreement and Consent, dated as of January 11, 2000 and by a 2001 Agreement and Consent Pursuant to Settlement Agreement dated as of December 27, 2001

(the Settlement Agreement, together with the foregoing, the "Amended Settlement Agreement"); and

WHEREAS, prior to the terrorist attack of September 11, 2001 on the World Trade Center, construction of a high rise residential apartment building (the "18A Project") to be built by a private developer (the "Developer") had begun on Site 18A in Battery Park City; and

WHEREAS, after September 11, 2001 rent levels achievable for residential buildings in Battery Park City are significantly lower than before the attack, resulting in a adverse impacts to the viability of the 18A Project, including a reduction by the Developer's lender in the amount it is willing to loan; and

WHEREAS, the Developer has requested that the Authority provide assistance to enable the project to be completed as planned prior to the expiration of favorable terms included in outstanding construction bids; and

WHEREAS, it is in the interest of both the City and the Authority to work together with the Developer to enable the building to be completed; and

WHEREAS, the City and the Authority desire to supplement certain existing agreements and understandings contained in the Amended Settlement Agreement and provide certain agreements and consents required or desirable thereunder.

NOW, THEREFORE, the parties hereto hereby agree as follows:

Section 1. PLAN FOR 18A PROJECT DEVELOPMENT

A. The City agrees that to assist in the construction of the 18A Project, (x) the Authority may advance funds simultaneously with Developer's lender on a pro rata basis in an amount not to exceed \$9,000,000 (the "18A Funds") from its Special Fund (as described in paragraph B below) to supplement the Developer's equity investment, (y) the Authority may restructure the existing ground lease for the 18A Project between the Developer and the Authority (the "Lease") to provide for the deferred payment of PILOST and Ground Rent as described in the term sheet attached hereto as Exhibit A and the letter from the Battery Park City Authority dated May 14, 2002 attached hereto as Exhibit B (the "Term Sheet"). and (z) the 18A Project may receive a Section 421-a 10 year abatement of payments in lieu of real estate taxes in accordance with the Term Sheet, notwithstanding anything to the contrary set forth in Paragraph 3 of the December 30, 1989 Agreement and Consent. As consideration for advancing the 18A Funds, restructuring the Lease and receiving the tax abatement, the Authority will receive, as specified in the Term Sheet, (i) a percentage of the net operating cash flow, (ii) a portion of the net proceeds available from refinancing of the permanent project loan or a sale of the 18A Project, (iii) repayment of the 18A Funds, (iv) repayment of deferred payments such as Ground Rent and PILOST,

and (v) additional returns to the Authority. All such payments made to the Authority in connection with Site 18A shall be treated as "Revenues" under the Amended Settlement Agreement. The foregoing consideration will be set forth in an amendment to the Lease consistent with the Term Sheet. In addition, such amendment will provide that, in the event the 18A Project obtains the benefit of tax exempt financing or real estate tax abatement programs more favorable than the program included in the amendment to the Lease pursuant to this Agreement, appropriate adjustments will be made to the terms of the Lease including the accelerated return to the Authority of the 18A Funds.

B. To fund the benefits described in paragraph A. above, without affecting the amount of Authority excess revenues that would otherwise be remitted to the City pursuant to the Amended Settlement Agreement, the Authority will provide the 18A Funds from the Special Fund established under the Master Revenue Resolution adopted by the Authority on October 15, 1993 (the "Special Fund"). The use of the Special Fund for the 18A Funds pursuant to Section 508 of the Master Revenue Resolution and the Amended Settlement Agreement is hereby approved.

C. If, in accordance with the Term Sheet, the Authority arranges for the 18A Project to be exempt from the Mortgage Recording Tax, the parties agree that the Authority shall pay to the City an amount equivalent to the amount of the mortgage tax that the Developer would have been required to pay the City (currently estimated to be \$1,348,780) if such an exemption had not been granted. The use of the Special Funds for such payment to the City pursuant to Section 508 of the Master Revenue Resolution and the Amended Settlement Agreement is hereby approved.

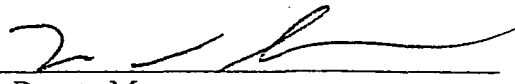
D. The Authority will request that the 18A Funds advanced pursuant to paragraph A of this Section and other benefits given by the Authority to the Developer pursuant to this Agreement be replaced by federal funds made available to aid in lower Manhattan's recovery from the effects of the terrorist attack on the World Trade Center.

Section 2. Authorization: Counterparts

By execution and delivery of this Agreement the undersigned represent and warrant on behalf of the City or the Authority, as applicable, that such execution and delivery has been duly authorized in accordance with applicable law. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same document.

ACCEPTED AND AGREED as of the date first above written.


CITY OF NEW YORK

By: 
Deputy Mayor
of the City of New York

By: _____
Deputy Comptroller
of the City of New York

By: _____
Timothy S. Carey, President
BATTERY PARK CITY AUTHORITY

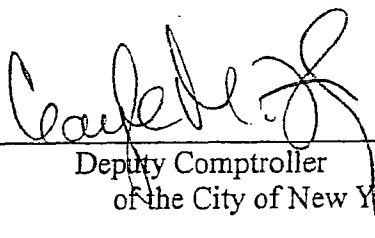
Approved as to form:

By: 
Assistant Corporation Counsel
ACCEING

ACCEPTED AND AGREED as of the date first above written.

CITY OF NEW YORK

By: _____
Deputy Mayor
of the City of New York

By:  _____
Deputy Comptroller
of the City of New York

By: _____
Timothy S. Carey, President
BATTERY PARK CITY AUTHORITY

Approved as to form:

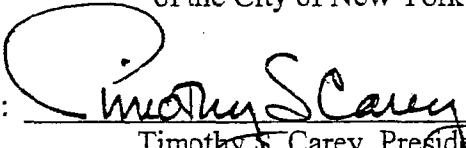
By: _____
Assistant Corporation Counsel

ACCEPTED AND AGREED as of the date first above written.

CITY OF NEW YORK

By: _____
Deputy Mayor
of the City of New York

By: _____
Deputy Comptroller
of the City of New York

By:  _____
Timothy S. Carey, President
BATTERY PARK CITY AUTHORITY

Approved as to form:

By: _____
Assistant Corporation Counsel

EXHIBIT A

The total amount of PILOST and Ground Rent payable during construction under the provisions of the existing lease will be deferred. This is to be repaid, without interest, upon refinancing of the permanent loan, or sale of the property, as provided below.

On the earlier of (a) twelve months following after first Temporary Certificate of Occupancy (TCO), or (b) 93% occupancy of the building ground rent will be re-established at \$0.50 per square foot, escalating annually at 2.0%. Payment of Ground Rent will be deferred until the earlier of sale or refinancing of the permanent loan, or fifteen years. The total Ground Rent deferred is to be repaid in the aggregate, without interest, upon refinancing of the permanent loan, or sale of the property as provided below.

The Authority will request that the City approve a 421-a 10-year tax abatement without the requirement of purchasing certificates.

The Authority will arrange for the transaction to be exempt from Mortgage Recording Tax (MRT) currently estimated at \$2,282,550.

Equity Contribution by the Authority

The Authority will advance up to \$9 million in equity to the project simultaneously with Developer's lender on a pro rata basis. In return, the Authority is to receive the following:

- a) Prior to the sale of the building, or refinancing of the permanent loan, net income after debt service will be split 90%/10% between Developer and the Authority, respectively
- b) The net proceeds from either the sale of the building, or refinancing of the permanent loan are defined as remaining cash after payment of the loan. The allocation of the net proceeds is per the following tier system:
 - 1. Repay balance of Developer's equity investment.
 - 2. Repay balance of the Authority's equity investment.
 - 3. Repay Developer equity with a cumulative annual return of 9.75% to Developer.
 - 4. Repay Authority equity with a cumulative annual return of 6.0% to the Authority.
 - 5. Pay deferred Ground Rent and PILOST to the Authority.
 - 6. Any remaining proceeds will be split 90%/10% between Developer and the Authority, respectively.

In the event that either the sale or refinancing of the permanent loan does not satisfy the amounts owed to the Authority, the balance owed is to be carried forward with interest and payable from net income after debt service based upon a 90%/10% split between Developer (or the subsequent owner) and the Authority, respectively.

Alexandra Altman
Executive Vice President
And General Counsel



HUGH L. CAREY
BATTERY PARK
CITY AUTHORITY

EXHIBIT B

May 14, 2002

Scott Ulrey, Esq.
Office of Management and Budget
75 Park Place
New York, NY 10007

Dear Scott:

You have asked that I confirm the following understandings about the meaning of various words used in Exhibit A to the proposed Agreement and Consent with respect to Site 18A in Battery Park City:

- (1) The word "this" in the second line of the first paragraph refers to the sum of (a) amount of ground rent during the construction period, as set forth in the existing Site 18A lease ("Lease") and (b) PILOST computed as set forth in the Lease.
- (2) The word "deferred" as used in the second line of the first paragraph and the third and fifth lines of the second paragraph means 'delayed,' referring to payment obligations to be delayed to a date later than provided in the Lease. The deferred payment is thus accrued, rather than cancelled.
- (3) The term "ground rent" used in the second and fourth lines of the second paragraph means any ground rent after the construction period. Note that the construction period as used in Exhibit A runs through the initial rent-up period, expressed as the earlier of one year after the first TCO or 93% occupancy.
- (4) The term "re-established" in the second line of the second paragraph means 'becomes,' i.e., ground rent after the construction period is being re-established or reset and becomes \$0.50 per square foot, escalating at 2% annually, rather than the amount set forth in the Lease.
- (5) The term "as provided below," which appears at the end of the first and second paragraphs, refers to the repayment structure set forth under "Equity Contribution by the Authority."
- (6) The "fifteen years" referred to in the fourth line of the second paragraph refers to the maximum amount of time (following the construction period) for which

annual ground rent accrues but is not payable when due under the Lease. Thus, after this fifteen-year period ground rent is payable annually on a current basis. (The total ground rent accrued and unpaid during this fifteen year period is to be paid in accordance with the repayment structure set forth under "Equity Contribution by BPCA").

Very truly yours,

A handwritten signature in black ink, appearing to read 'Alex Altman', with a stylized, cursive script.

Alexandra Altman